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STATE OF NEVADA, ex rel. its BOARD OF MEDICAL EXAMINERS,

PAMELA CASTAGNOLA, KIM FRIEDMAN,

KATI PAYTON, and EDWARD COUSINEAU

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LARA WARD, an individual,

Plaintiff,

vs.

STATE OF NEVADA, ex rel. its BOARD
OF MEDICAL EXAMINERS, DON
ANDREAS, an Individual, PAMELA
CASTAGNOLA, an Individual, KIM
FRIEDMAN, an Individual, KATI
PAYTON, an Individual, TODD RICH, an
Individual, AND EDWARD COUSINEAU,
an Individual; DOES I - X,

Defendants.

Case No.: 2:17-cv-03029-JAD-NJK

**STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER REGARDING
CONFIDENTIALITY AGREEMENT**

Complaint Filed: December 11, 2017

Trial Date: None set

Plaintiff, LARA WARD (“Plaintiff”) and Defendants, STATE OF NEVADA, ex rel. its
BOARD OF MEDICAL EXAMINERS, PAMELA CASTAGNOLA, KIM FRIEDMAN, KATI
PAYTON, DON ANDREAS, and EDWARD COUSINEAU (“Defendants”) (jointly the
“parties”) by and through their respective attorneys of record, hereby stipulate and agree as
follows:

1 1. Parties' Acknowledgment and Agreement. The parties acknowledge and agree
2 that certain information subject to discovery in the above-captioned matter may contain
3 privileged information, trade secret, proprietary, private, confidential, and/or other business
4 and/or personal information, which, if divulged, could damage one or more parties' business
5 interests and/or could infringe on a constitutionally protected right of privacy. Subject to and
6 without waiving any objections any party may have as to the discoverability of any information,
7 the parties, by and through their respective attorneys of record, hereby stipulate and agree that
8 documents and information produced during the course of discovery in this matter shall be
9 protected against inappropriate disclosure in accordance with the terms and conditions set forth
10 below.

11 2. Scope of Stipulation and Protective Order. This Stipulation and [Proposed]
12 Protective Order Regarding Confidentiality Agreement ("Stipulation and Protective Order") shall
13 govern all materials produced by the parties to this action in response to any discovery request in
14 this action, including informal production and discovery produced by the parties prior to entering
15 into this agreement (including, but not limited to, computer hardware, documents, and deposition
16 transcripts) and all information contained in those materials, and all copies, excerpts, or
17 summaries of those materials (hereinafter collectively referred to as "DISCOVERY
18 MATERIAL") and DISCOVERY MATERIAL produced by third parties in response to
19 discovery if designated confidential by any of the Parties within 30 days of production of such
20 information by a third party.

21 3. Computer Hardware. Discovery requests concerning non-privileged information
22 that is kept in electronic format in the normal course of Defendants' business shall be produced
23 in electronic format. All other non-privileged information shall be produced in hard/paper copy
24 format.

25 4. Non-Party DISCOVERY MATERIAL. This Stipulation and Protective Order
26 shall govern all DISCOVERY MATERIAL produced during discovery by any non-parties. In
27 the event a non-party requests the protections provided by this Stipulation and Protective Order,
28 such non-party will be treated as a party under this Stipulation and Protective Order.

1 5. Definitions of and Limitations on Use of CONFIDENTIAL DISCOVERY
2 MATERIAL. Confidential information subject to this Stipulation and Protective Order
3 (“CONFIDENTIAL DISCOVERY MATERIAL”) is information that has not been made public
4 and that refers to, describes, or consists of the disclosure of confidential, proprietary, medical,
5 mental health or otherwise non-public business, technical, or financial information, employee
6 personnel and earnings information, or information protected by third-party privacy rights.
7 CONFIDENTIAL DISCOVERY MATERIAL includes not only the information contained in
8 documents and other materials designated as such pursuant to this Stipulation and Protective
9 Order, but also to any summaries, copies, abstracts, compilations, or other documents or material
10 derived from CONFIDENTIAL DISCOVERY MATERIAL. The parties acknowledge that the
11 only information to be designated as CONFIDENTIAL DISCOVERY MATERIAL is that which
12 is properly subject to protection or which may be held confidential pursuant to NRS 630.336
13 and/or NRS 630.311. The party or third party asserting the “Confidential” designation as to any
14 DISCOVERY MATERIAL shall have the burden of justifying that the designation is consistent
15 with Nevada law. Until the Court or Arbitrator rules otherwise, the challenged DISCOVERY
16 MATERIAL shall be treated as CONFIDENTIAL.

17 6. Designation of Material as “Confidential.” Any party to this Stipulation and
18 Protective Order may, in good faith, designate DISCOVERY MATERIAL that consists of or
19 includes non-public information that would reasonably be subject to protection as
20 “Confidential.” Such DISCOVERY MATERIAL may include documents, deposition testimony,
21 transcripts, and exhibits; responses to interrogatories; responses to requests for admission; and
22 other written, recorded, or graphic information and materials produced by a party or non-party in
23 the course of this action. Designation of DISCOVERY MATERIAL containing
24 CONFIDENTIAL DISCOVERY MATERIAL shall be made by stamping the legend
25 “Confidential—Subject to Protective Order” or “Confidential” on the document. Multi-paged
26 CONFIDENTIAL DISCOVERY MATERIAL that is bound together need only be designated on
27 the first page. If the CONFIDENTIAL DISCOVERY MATERIAL cannot be so labeled, it will
28 be designated “Confidential” in some other conspicuous manner. Any “Confidential”

1 designation that is inadvertently omitted during document production may be corrected by
2 written notice to the other party. In the case of documents and other materials produced by a
3 party, the “Confidential” designation shall be made at the time of production.

4 7. Confidential Treatment for Documents not Designated. Any party may obtain
5 confidential treatment for documents or other materials previously produced by any party or non-
6 party without such designation if the party seeking the designation sends written notice of such
7 designation to all other parties or non-parties in the possession of such documents or other
8 materials and within thirty (30) days of their production marks the subject documents or other
9 materials with the word “Confidential” and reproduces them. All documents and other materials
10 produced by a non-party and not designated as “Confidential” by a party at the time of their
11 production shall nonetheless be treated as CONFIDENTIAL DISCOVERY MATERIAL for
12 thirty (30) days following such production.

13 8. Designation of Confidential Deposition Testimony. With respect to testimony
14 elicited during depositions, whenever counsel for a party deems that any question or line of
15 questioning calls for the disclosure of information that should be treated as CONFIDENTIAL
16 DISCOVERY MATERIAL, counsel may: (i) designate on the record prior to such disclosure
17 that such information is being designated as “Confidential” or (ii) give written notice of specific
18 pages and lines of testimony to all other counsel that such information is being designated as
19 “Confidential” within thirty (30) days after receiving a copy of the deposition transcript. Each
20 party shall attach a copy of such written notice to all copies of the deposition within its
21 possession, custody, or control.

22 9. Limited Use of CONFIDENTIAL DISCOVERY MATERIAL. CONFIDENTIAL
23 DISCOVERY MATERIAL will be held by the receiving party exclusively for use in connection
24 with the above-captioned action and any appeals thereof. A party shall not disseminate any
25 CONFIDENTIAL DISCOVERY MATERIAL produced by the other party or by a non-party
26 except as necessary for use in these proceedings, and subject to the further restrictions set forth
27 in paragraph 10, below. The parties shall take reasonable and prudent measures to safeguard the
28 confidentiality of all CONFIDENTIAL DISCOVERY MATERIAL.

1 10. Disclosure of CONFIDENTIAL DISCOVERY MATERIAL. All
2 CONFIDENTIAL DISCOVERY MATERIAL may be used solely for the purpose of this
3 litigation and not for any business or other purpose. CONFIDENTIAL DISCOVERY
4 MATERIAL shall not be used or disclosed directly or indirectly by the party receiving such
5 CONFIDENTIAL DISCOVERY MATERIAL to persons other than:

6 (a) The Court or Arbitrator, persons employed by the Court or
7 Arbitrator/Arbitration Tribunal, the stenographer transcribing the testimony or argument at a
8 hearing, trial, or deposition in this action, and any special master or mediator appointed by the
9 Court or Arbitrator or agreed-to by the parties;

10 (b) Counsel of record for any party to this action, as well as regular employees
11 of such counsel, and outside copy services, used to assist in the defense or prosecution of this
12 litigation;

13 (c) Experts and consultants retained by any party or counsel of record for any
14 party to assist in the defense or prosecution of this litigation; and

15 (d) Any employee, former employee, agent or independent contractor of any
16 party who is requested by counsel to assist in the defense or prosecution of this litigation,
17 provided, however, that disclosure of the CONFIDENTIAL DISCOVERY MATERIAL to said
18 individual is made only to the extent necessary for the employee, former employee, agent or
19 independent contractor to perform such assistance.

20 (e) Any person agreed upon by the parties to serve as a mediator in this
21 litigation.

22 (f) A witness during the deposition of that witness for the purpose of
23 examining that witness concerning the CONFIDENTIAL DISCOVERY MATERIAL, provided
24 that the witness has executed an undertaking in the form attached hereto as Exhibit A. In the
25 event that a witness at deposition refuses to provide such certification after having been given a
26 copy of this Stipulation and Protective Order and an opportunity to read the order in its entirety,
27 disclosure of CONFIDENTIAL DISCOVERY MATERIAL to the witness for purposes of
28 examining the witness may occur only after the following statement is read to the witness on the

1 record: “A Protective Order has been entered by the Court [or Arbitrator] in this action. You
2 have been given a copy of the Protective Order and an opportunity to read the order in its
3 entirety. Documents and information designated as “Confidential” or “Confidential – Subject to
4 Protective Order” on their face, or by counsel during the course of this deposition, shall be
5 subject to the terms of the Protective Order, and violations of the order may subject the violator
6 to contempt proceedings or other remedies to the extent provided by law.”

7 Any party that seeks to make disclosure of CONFIDENTIAL DISCOVERY MATERIAL
8 permitted under this Order to a person listed in subparagraphs 10(c) or 10(e) above shall, prior to
9 such disclosure, advise the recipient of such information of the contents of this Stipulation and
10 Protective Order and require each such person to whom such disclosure is made to execute an
11 undertaking in the form attached hereto as Exhibit A. All such undertakings shall be retained by
12 counsel for the party who discloses CONFIDENTIAL DISCOVERY MATERIAL in this way.

13 11. Challenge to Designation of CONFIDENTIAL DISCOVERY MATERIAL or
14 Redactions of Information Contained Therein. Any party may object to the designation of
15 particular documents or other materials as “Confidential” by giving written notice to the party
16 making the designation and to all other parties at least forty-five (45) days before trial in this
17 matter. Such notice shall identify with reasonable specificity the documents or other materials to
18 which the objection is directed and the basis for the objection. The parties shall attempt to
19 resolve any such dispute by meeting and conferring. In the event the dispute cannot be resolved
20 within fourteen (14) days of the giving of such written notice, it shall be the obligation of the
21 party designating the documents as “Confidential” to file an appropriate motion requesting a
22 ruling by the Court or Arbitrator that the disputed documents or other materials be designated
23 “Confidential.” The disputed documents or other materials shall be treated as CONFIDENTIAL
24 DISCOVERY MATERIAL pending a ruling from the Court or Arbitrator.

25 12. No Waiver of Objections. Nothing in this Stipulation and Protective Order shall
26 constitute a waiver of a party’s right to object to the production of DISCOVERY MATERIAL
27 on privacy, attorney-client privilege, attorney work product, relevancy, or other grounds when a
28 party deems such an objection to be necessary or appropriate, or to demand more stringent

1 restrictions upon the treatment and disclosure of any DISCOVERY MATERIAL on the ground
2 that it contains particularly sensitive information. Failure to object to the designation of
3 particular documents or other materials as “Confidential” does not imply acceptance of that
4 designation, which may be challenged at any time by way of motion after the party seeking to
5 file such a motion meets and confers with the party making the designation.

6 13. No Restriction on Material Independently Obtained or Publicly Available
7 Material. Nothing in this Stipulation and Protective Order shall be deemed in any way to restrict
8 the use of documents or information that are lawfully obtained or publicly available to a party
9 independently from formal discovery in this action, regardless of whether the same material has
10 been obtained during the course of discovery in the action and regardless of whether such
11 documents or information have been designated as CONFIDENTIAL DISCOVERY
12 MATERIAL or whether such information has been redacted.

13 14. Exemption for Authors and Recipients of Confidential Documents. Nothing in
14 this Stipulation and Protective Order shall be deemed to prohibit disclosure of any document
15 designated “Confidential” to such persons as appear on the face of the document to be its author
16 or a recipient thereof.

17 15. No Limitation on Party’s Use of Own DISCOVERY MATERIAL. Nothing in
18 this Stipulation and Protective Order shall limit or affect the right of a party to disclose or to
19 authorize disclosure of DISCOVERY MATERIAL produced by such party.

20 16. Use of CONFIDENTIAL DISCOVERY MATERIAL in Court/Arbitration
21 Proceedings. ~~In the event that any CONFIDENTIAL DISCOVERY INFORMATION is used in~~
22 ~~any Court or Arbitration proceeding in this action, it shall not lose its confidential status through~~
23 ~~such use. Nothing herein shall be construed to affect in any way the admissibility of any~~

See order issued

concurrently herewith ~~y, or other evidence at trial. Documents or other materials filed by any party~~
~~with the Court or Arbitrator before, during, or after trial or arbitration that contain~~
26 ~~CONFIDENTIAL DISCOVERY MATERIAL shall be placed under seal and not made available~~
27 ~~to persons other than the Court and persons authorized by this Stipulation.~~

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1 17. Modification of this Protective Order. Any party to this Stipulation and
2 Protective Order may apply to the Court or Arbitrator for modification of this Stipulation and
3 Protective Order at any time. Nothing in this Stipulation and Protective Order shall preclude the
4 parties from agreeing to amend or modify this Stipulation and Protective Order or from agreeing
5 to extend it to other legal proceedings between some or all of the parties, so long as any such
6 agreement (i) is in a signed writing and (ii) applies to CONFIDENTIAL DISCOVERY
7 MATERIAL that was produced by the signatories to such an agreement. The closure of trial or
8 arbitration proceedings and sealing of the record of a trial or arbitration are not covered by this
9 Stipulation and Protective Order. These issues may be taken up upon the motion of any party or
10 at the pre-trial conference.

11 18. Removal of DISCOVERY MATERIAL from Scope of Protective Order. Any
12 party may consent to have any documents or other materials it previously designated as
13 “Confidential” removed from the scope of this Stipulation and Protective Order by so notifying
14 counsel for the other parties in writing or by so stating on the record at any hearing or deposition.
15 Nothing contained in this Stipulation and Protective Order shall prevent any party from
16 disclosing its own CONFIDENTIAL DISCOVERY MATERIAL as it deems appropriate.

17 19. Post-Litigation Treatment of CONFIDENTIAL DISCOVERY MATERIAL. The
18 provisions of this Stipulation and Protective Order shall not terminate at the conclusion of these
19 actions. Within 120 days of final conclusion of all aspects of this litigation, including any and all
20 appeals, documents and other materials stamped or otherwise identified as “Confidential” or
21 “Confidential – Subject to Protective Order” and all copies of same (other than exhibits of
22 record) shall be returned to the party that produced such documents upon request or, at the option
23 of the producing party, destroyed; except that counsel of record may retain for their files copies
24 of any paper served or filed in this litigation, including portions of any such papers that contain
25 or disclose CONFIDENTIAL DISCOVERY MATERIAL. All counsel of record shall execute a
26 certification of compliance herewith and shall deliver the same to counsel for the party that
27 produced the documents not more than 120 days after said request.

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1 20. Continuing Effect of this Stipulation and Protective Order. Neither the
2 termination of the litigation of the above-captioned matter nor the termination of employment of
3 any person who had access to any CONFIDENTIAL DISCOVERY MATERIAL shall relieve
4 any person from the obligations of maintaining both the confidentiality and the restrictions on
5 use of anything disclosed pursuant to this Stipulation and Protective Order.

6 21. Inadvertent Disclosure of CONFIDENTIAL DISCOVERY MATERIAL. The
7 inadvertent production or disclosure of any privileged or otherwise protected information by any
8 party shall not constitute, or be considered as a factor suggesting, a waiver or impairment of any
9 claims of privilege or protection, including but not limited to, the attorney client privilege and
10 the protection afforded to work product materials. If any privileged or otherwise protected
11 information is inadvertently produced, the producing party must provide written notice to any
12 other parties that such information, or CONFIDENTIAL DISCOVERY MATERIAL containing
13 such information, has been inadvertently produced or disclosed. Within three (3) business days
14 of the receipt of such notice, each other party shall return to the producing party all such
15 CONFIDENTIAL DISCOVERY MATERIAL and copies thereof identified in the notice in its
16 possession, and shall make reasonable efforts to reclaim and return any such CONFIDENTIAL
17 DISCOVERY MATERIAL and information. The party that has inadvertently produced or
18 disclosed such information shall, within ten (10) business days after such material is returned to
19 it, provide a privilege log identifying the CONFIDENTIAL DISCOVERY MATERIAL and the
20 copies returned to the producing party such that the non-producing party is able to challenge the
21 producing party's claim that the DISCOVERY MATERIALS are privileged or otherwise
22 protected.

23 21. Stipulation and Protective Order. The parties agree to submit this Stipulation and
24 Protective Order for entering by the Court or Arbitrator and to be bound by its terms prior and
25 subsequent to entry by the Court or Arbitrator.

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By: /s/ S. Brett Sutton
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~~**[PROPOSED] ORDER**~~

GOOD CAUSE APPEARING, it is hereby ORDERED, ADJUDGED, AND DECREED
that all parties to this action shall obey the provisions of the attached Stipulation.

IT IS SO ORDERED.

Date: March 23, 2018


UNITED STATES MAGISTRATE JUDGE

EXHIBIT A
CONSENT TO BE BOUND

I, _____, declare:

1. My address is _____.

My present occupation is _____.

2. I have received a copy of the Stipulation and Protective Order Regarding Production of Confidentiality Agreement (the "Protective Order") in this action entitled *Ward v. State of Nevada ex rel. its Board of Medical Examiners, et al.*, I have carefully read the provisions of the Protective Order, and I understand those provisions.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence and will not copy or use except for purposes of this action any information designated as "Confidential" or "Confidential – Subject to Protective Order" that I receive or view in this action.

4. I further irrevocably consent to the jurisdiction of the United States District Court, District of Nevada for the limited purposes of any proceeding to enforce or to secure compliance with the terms of the Protective Order or to punish the breach of any terms of the Protective Order.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this _____ day of _____, 2018.

Signature